

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AQUILA, INC., d/b/a AQUILA NETWORKS	DOCKET NO. RPU-02-5
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**ORDER DENYING MOTION TO STRIKE AND
DENYING MOTION TO FILE SURREBUTTAL TESTIMONY**

(Issued November 27, 2002)

Motion To Strike

On November 1, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a motion to strike certain rebuttal testimony and exhibits submitted by Aquila, Inc., d/b/a Aquila Networks (Aquila). On November 14, 2002, Aquila filed a response to Consumer Advocate's motion and Consumer Advocate replied to Aquila's response on November 19, 2002. On November 22, 2002, Aquila filed a reply to Consumer Advocate's November 19, 2002, response. Also on November 22, 2002, Interstate Power and Light Company, intervenor in this docket, filed a response to Consumer Advocate's November 19, 2002, response.

In support of its motion, Consumer Advocate asserts that Aquila witness Petersen proposed new and first time adjustments that 1) were never proposed as pro forma adjustments in Aquila's rate increase filing of June 3, 2002, and 2) were never addressed as such in Consumer Advocate's direct testimony and exhibits

submitted on September 13, 2002. Consumer Advocate claims that the testimony and exhibits regarding these adjustments violate 199 IAC 7.11. In addition, Consumer Advocate asserts that Aquila's proposed adjustments were made for the first time in this proceeding in Aquila witness Petersen's rebuttal testimony and exhibits. Therefore, Consumer Advocate requests the Board strike the adjustments found in pages 3 through 6 of the rebuttal testimony of Aquila witness Petersen as well as his rebuttal exhibit identified as RGP-2.

In its response, Aquila states that the adjustments Consumer Advocate seeks to strike are in direct response to pro forma adjustments proposed by Consumer Advocate witness Kebede in his direct testimony filed September 13, 2002. Aquila asserts that witness Kebede proposed pro forma adjustments based on Aquila workforce reductions occurring subsequent to the initial filing of the rate case on June 3, 2002, and that Aquila witness Petersen's rebuttal testimony included matching evidence and adjustments to witness Kebede's testimony.

Board subrule 199 IAC 7.11(2) states:

In rate regulatory proceedings under Iowa Code sections 476.3 and 476.6, the board shall consider verifiable data, existing as of the date of commencement of the proceedings, respecting known and measurable changes in costs not associated with a different level of revenue and known and measurable revenues not associated with a different level of costs, that are to occur within 2 months after the date of commencement of the proceedings.

Each party asserts that the other has submitted adjustments for Aquila's payroll and related expenses based on information existing after the date of

commencement of the proceedings. The Board raised the issue of potential cost reductions due to Aquila layoffs in its "Order Requesting Additional Information," issued July 5, 2002. In the July 5, 2002, order, the Board required Aquila to provide updates of any cost reductions due to any workforce layoffs by Aquila. Aquila filed additional information on July 15, 2002, September 3, 2002, and November 8, 2002. The cost reductions were addressed by Consumer Advocate witness Kebede in his direct testimony. Aquila witness Petersen then filed testimony contending there are matching increases in costs also associated with the workforce reductions.

Iowa Code § 476.33(4) explicitly allows for the Board to consider other evidence beyond the evidence associated with the "matching principle" in rate case proceedings. In addition, Board subrule 199 IAC 7.11(2) does not limit the Board's authority to consider only verifiable data existing at the date of commencement of these proceedings. The Board finds that the hearing is the appropriate forum in which to address the question of how the adjustments proposed by witness Petersen relate to the Aquila workforce reduction updates requested by the Board. Therefore, the Board will deny Consumer Advocate's motion to strike.

Motion to File Surrebuttal Testimony

On November 20, 2002, Aquila filed with the Board a motion for leave to file limited surrebuttal testimony. In support of its motion, Aquila states that it should be given an opportunity to respond to Consumer Advocate's surrebuttal testimony. Specifically, Aquila seeks to respond to portions of Consumer Advocate witness

Dittmer's testimony filed November 1, 2002, which was allowed pursuant to the Board's scheduling order. Aquila asserts that as the party assigned the burden of proof in this docket, it should be allowed the "final word" with respect to the presentation of evidence.

The Board issued a procedural schedule in this docket on June 28, 2002, that outlined the order of submission for direct and rebuttal testimony. The format of the June 28, 2002, procedural schedule is one that is commonly used by the Board. Neither party raised objections to the format at the time the schedule was issued. Therefore, the Board will deny Aquila's motion to submit surrebuttal testimony. Aquila has the opportunity to address Consumer Advocate witness Dittmer's testimony during cross-examination at the hearing in this docket, which is scheduled to begin on December 16, 2002.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Consumer Advocate's motion to strike certain rebuttal testimony and exhibits submitted by Aquila, Inc., d/b/a Aquila Networks, filed on November 1, 2002, is denied as described in the body of this order.

2. The motion for leave to file surrebuttal testimony filed by Aquila, Inc., d/b/a Aquila Networks, on November 20, 2002, is denied as described in the body of this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27th day of November, 2002.